

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

This Document Relates to:
All Cases

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) MDL No. 1:13-md-2419-RWZ
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**INSIGHT HEALTH CORP.’S MOTION FOR ENTRY OF SUPPLEMENTAL
ORDER TRANSFERRING ADDITIONAL PERSONAL INJURY CASES**

Insight Health Corp. (“Insight”), by and through their undersigned counsel, respectfully requests that this Court enter a supplemental order transferring additional personal injury cases in accordance with this Court’s memorandum of decision dated May 15, 2014 and order dated June 5, 2014, and in support thereof states as follows:

BACKGROUND

On December 27, 2013, the Chapter 11 Trustee (the “Trustee”) for the bankruptcy estate of New England Compounding Pharmacy, Inc. (“NECC”) filed the Chapter 11 Trustee’s Renewed and Supplemental Motion to Transfer Additional Personal Injury Tort and Wrongful Death Cases to This Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334 [Doc. No. 732] (the “Renewed Transfer Motion”), seeking to transfer to this Court certain personal injury and wrongful death cases pending in Virginia state court.

On May 15, 2014, this Court entered its Memorandum of Decision [Doc. No. 1131] (the “Supplemental Transfer Decision”) granting the Renewed Transfer Motion.

On June 5, 2014, this Court entered its order directing the transfer of twenty (20) personal injury and wrongful death cases pending in the Roanoke City Circuit Court to this Court [Doc. No. 1173] (the “Roanoke Transfer Order”).

Subsequent to the entry of the Roanoke Transfer Order, an additional wrongful death case, *Larry D. Gaskins, Executor of the Estate of Miriam G. Warren, deceased v. Insight Health Corp., et al.* (Case No. CL14-1183), was commenced in the Roanoke City Circuit Court, where it remains pending. The Trustee filed a Motion for Entry of a Supplemental Order Transferring Additional Wrongful Death Case [Doc. No. 1252] following the filing of the *Gaskins* case seeking its transfer to this Court.

Following the filing of the *Gaskins* case, three additional personal injury cases were filed in the Roanoke City Circuit Court. The first is *Carolyn D. Fidler, et al. v. Insight Health Corp., et al.* (Case No. CL14-1300), which includes ten (10) plaintiffs. The second is *Jean E. Clemons v. Insight Health Corp., et al.* (Case No. CL14-1311). The third is *Theron L. Lester v. Insight Health Corp., et al.* (Case No. CL14-1422).

RELIEF REQUESTED

In accordance with this Court's Supplemental Transfer Decision and Roanoke Transfer Order, Insight seeks entry of a supplemental order transferring to this Court the additional personal injury actions styled *Carolyn D. Fidler, et al. v. Insight Health Corp., et al.* (Case No. CL14-1300), *Jean E. Clemons v. Insight Health Corp., et al.* (Case No. CL14-1311), and *Theron L. Lester v. Insight Health Corp., et al.* (Case No. CL14-1422). Transfer of these cases is appropriate and consistent with the Supplemental Transfer Decision and the Roanoke Transfer Order, which Insight incorporates herein by reference. Specifically, the *Fidler*, *Clemons*, and *Lester* cases are on all fours with the personal injury and wrongful death actions previously transferred from the Roanoke City Circuit Court to this Court pursuant to the Roanoke Transfer Order. The claims alleged in the three cases are exactly the types of claims for which Insight has asserted a right to indemnity and contribution against NECC in its proof of claim filed in the

chapter 11 case. Additionally, all ten plaintiffs in the *Fidler* case, the plaintiff in the *Clemons* case, and the plaintiff in the *Lester* case have all filed proofs of claim in the chapter 11 case.

CONCLUSION

For the reasons stated herein, Insight respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit 1, transferring the *Fidler*, *Clemons*, and *Lester* cases to this Court.

Dated: July 31, 2014
Richmond, Virginia

Respectfully submitted,

/s/ Samuel T. Towell

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CERTIFICATE OF SERVICE

I, Samuel T. Towell, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 1, 2014.

Dated: July 31, 2014 /s/ Samuel T. Towell
Samuel T. Towell